Before the FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, DC 20554

In the Matter of)	
)	
Application for Consent to Assignment)	MB Docket No. 13-190
of Broadcast Station Licenses from)	BTCCDT-20130715AGP
Local TV, LLC to Dreamcatcher)	BTCCDT-20130715AGQ
Broadcasting, LLC)	BTCCDT-20130715AGR

PETITION TO DENY

Free Press and Put People First PA ("Petitioners"), pursuant to Sections 309 and 310 of the Communications Act, 47 U.S.C. §§ 309(d), 310(d), and 47 C.F.R. § 73.3584, respectfully request that the Federal Communications Commission deny assignment of three licenses from Local TV, LLC ("Local TV") to Dreamcatcher Broadcasting, LLC ("Dreamcatcher"). The three assignments are part of, and integral to, a larger transaction involving the sale of nineteen Local TV television stations to Tribune Broadcasting Company II, LLC ("Tribune Broadcasting"), under which the Tribune Company ("Tribune") would acquire all of the interests of Local TV and then assign its purchase rights for these three stations to Dreamcatcher. Should the Commission nonetheless determine to grant the applications in whole or in part, it should condition their grant upon the outcome of any rulemaking relating to the Commission's national television multiple ownership rules. For the reasons set forth below, this matter should be decided in the first instance by the full Commission sitting *en banc*.

I. Introduction

The central issue presented here is whether an arrangement designed to evade the Commission's broadcast ownership rules, and that has the same effect as a transaction that would contravene the Commission's rules, is in the public interest. Petitioners' position is that any

transaction that has the same result as a violation of the Commission's local ownership rules is necessarily contrary to the public interest.

Tribune is a national multimedia company that currently owns ten daily newspapers, twenty-three television stations, national cable superstation WGN America, regional cable news channel Chicagoland Television, and Chicago's WGN radio. On July 1, 2013, Tribune announced it had reached an agreement to purchase nineteen broadcast television stations in sixteen markets from Local TV for \$2.73 billion in cash. The transaction would make Tribune the United States' largest commercial TV owner, with forty-two stations (excluding satellites). Tribune also announced it would become the number one FOX affiliate group and the expand its lead as the top CW affiliate group with the Local TV additions.¹

In two Designated Market Areas ("DMAs") ranked below the top twenty – Norfolk/Portsmouth/Newport News, VA (#44) and Wilkes-Barre/Scranton/Hazelton, PA (#54) – Tribune would acquire and assign purchase rights to television stations that serve the same communities as its respective daily newspapers, the *Daily Press* and *The Morning Call*. The Commission's Newspaper Broadcast Cross Ownership ("NBCO") Rule expressly forbids combinations of this type. Rather than seeking a waiver – to which it clearly is not entitled – Tribune seeks to evade the NBCO Rule by creating a shell corporation, Dreamcatcher, to hold the licenses for these stations. Former Tribune president Ed Wilson owns Dreamcatcher. The stations will be operated as if Tribune owned them outright pursuant to a shared services agreement ("SSA"), which dictates that Tribune shall provide the following to these three stations: 1) Technical Services; 2) Promotional and Other Services; 3) Back-Office and Related Support Services; 4) Assistance with Distribution Matters; and 5) Delivered Programming.

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¹ Tribune.com, "Tribune to Acquire Local TV, Creating Content and Distribution Powerhouse," July 1, 2013, http://corporate.tribune.com/pressroom/?p=5734.

For all intents and purposes, Tribune would control the Dreamcatcher stations and daily newspapers that serve the same communities as these stations, thereby violating the NBCO Rule.

II. Statement of Interest

Free Press is a national, non-partisan organization working to reform the media, to increase public participation in crucial media and telecommunications policy debates, and to foster policies that will produce a more competitive and public interest-oriented media ecosystem. Free Press is the largest media reform organization in the United States, with more than half a million activists and members nationwide.

Since its inception, a core component of Free Press' mission has been to promote diverse and independent media ownership and to prevent the concentration of media markets and the harms that flow therefrom. Free Press has participated extensively in media ownership proceedings at the FCC, including the 2010 Quadrennial Media Ownership Review and other broadcast television license transfer proceedings. In each, Free Press has advocated for policies that promote competition and serve the public interest. As such, Free Press constitutes a "party in interest" within the meaning of Section 309(d) of the Communications Act, as amended, and has standing to participate in this proceeding.

Put People First PA is a statewide organization in Pennsylvania, organizing on a variety of issues to fight for individuals' rights and promote civic engagement in communities across the commonwealth. Media diversity and news quality are integral to its mission to create a better informed society and more engaged activists on the issues it champions. It has chapters and individual members in different communities, including in Wilkes-Barre/Scranton, PA, the community of license for Local TV's WNEP-TV; and in Allentown, PA, the community in which the *Morning Call* is published and over which WNEP-TV places a signal.

The Petitioners are parties in interest within the meaning of Section 309(d)(1) of the Act, 47 U.S.C. § 309(d)(1). As demonstrated herein and in the attached declaration, each organization has as part of its mission promoting diversity of viewpoints and ensuring that broadcast stations serve the needs of the public. The organizations have members and constituents that reside in areas served by television stations subject to this Petition. Grant of permission for the assignment of these licenses would harm Petitioners, their members, and their constituents by causing a permanent loss of diversity of viewpoints available to them and a permanent decrease in competition in coverage of local news.

III. Granting the Applications to Transfer Broadcast Licenses from Local TV to Dreamcatcher Broadcasting LLC Would Not Serve The Public Interest

Under Section 310(d) of the Act, 47 U.S.C. § 310(d), the Commission must determine whether a proposed license transfer will serve the public interest, convenience, and necessity. In making its determination, the Commission must assess whether the transaction complies with the Act and the Commission's rules. Even if the transaction would not violate a statute or a rule, the Commission must evaluate whether it would result in public interest harms by frustrating or impeding the goals or the implementation of the Act.²

The Commission should not approve the transfer of WNEP-TV, WTKR-TV, and WGNT-TV to Dreamcatcher because the grant would be contrary to the public interest and would continue a dangerous precedent allowing broadcasters to subvert the purpose of the local media ownership rules. Increasingly, television stations and newspaper operations that cannot lawfully merge under the rules use SSAs and similar arrangements to circumvent these limits while consolidating their core operations and operating the properties as if fully owned and controlled by a single entity. The deal between Tribune, Local TV, and the newly formed

 $^{^2}$ See, e.g., In the Matter of Verizon Communications Inc. and MCI, Inc., Memorandum Opinion and Order, 20 FCC Rcd 18433, ¶ 16 (2005).

Dreamcatcher is one of several such arrangements proposed in recent months. These practices diminish competition, localism, and journalistic independence, and decrease the quality of local news in the communities served. The instant transaction provides an opportunity to deny such an attempt to sidestep the rules, and to reestablish meaningful local ownership limits.

A. Shared Service Agreements That Facilitate Evasion of the Local Ownership Rules Are Inconsistent with the Public Interest

SSAs designed to circumvent the Commission's rules are inconsistent with the public interest. Tribune and Dreamcatcher's proposed sharing arrangement is one of several recent covert consolidation deals. To Petitioners' knowledge, the Commission has never before approved such an SSA that would facilitate a violation of the NBCO Rule.³

B. The Commission Should Deny the Virginia and Pennsylvania License Transfers Subject to this Petition to Deny

The proposed license transfers for stations in these two DMAs plainly violate the NBCO Rule. Tribune has not requested waivers of the NBCO Rule, and certainly cannot demonstrate that it would qualify for them. Tribune owns a daily newspaper published in a community covered by the Local TV stations in both markets, each of which are in DMAs below the top twenty. To justify the proposed transfer of control, Tribune and Dreamcatcher have executed an SSA which functions under the legal fiction that Dreamcatcher is the licensee, but Tribune will effectively control the stations.

The first indication that Tribune seeks to control these stations is Dreamcatcher's identity as its SSA partner. Dreamcatcher clearly was formed with the express purpose of holding these licenses in order to dodge the Commission's rules. Records show that Dreamcatcher was

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³ In June 2013, Gannett Company, Inc. announced that it would buy Belo Corporation for \$2.2 billion. The transaction poses a multiple- or cross-ownership problem in five markets. In two markets, Tucson and Portland, the applicants seek to circumvent the NBCO Rule by entering into SSAs with shell corporations. Free Press and others filed a Petition to Deny those license transfers, which is pending in MB Docket No. 13-189.

incorporated on July 10, 2013,4 a mere five days prior to execution of the Asset Purchase Agreement ("APA") for these three assignments, and nine days after the announcement of the entire Tribune-Local TV deal. Dreamcatcher is solely owned by Ed Wilson, the former president of Tribune Broadcasting and chief revenue officer of Tribune.⁵ He resigned from these posts in 2010 and has since served in a consultant capacity.

Both the APA and the SSA make it clear that Tribune would be the effective owner of the stations. First, under the APA, it is Tribune that would cause the assignment of these stations to Dreamcatcher, not Local TV.6 Second, Dreamcatcher has no rights under the general Purchase Agreement between Tribune and Local TV, and may not take action against Local TV or its representatives in the event of breach thereof. Taken together, these facts point to Tribune having ultimate control of the licenses in question – and make it plain that but for the NBCO Rule, Tribune would have retained nominal as well as actual control of them.

Tribune and Dreamcatcher executed nearly identical SSAs for all three stations. Those agreements state that Dreamcatcher shall pay Tribune \$840,000 per month in consideration for its services at WTKR-TV and WGNT-TV, and \$1,020,000 per month for services at WNEP-TV. Tribune and Dreamcatcher delineated only three services that could not be shared: 1) Senior Management Personnel; 2) "Control"; and 3) Advertising Sales. The parties may have added these provisions in an effort to legitimize the notion that Tribune would not be the effective owner of the respective stations. However, a closer examination reveals that Tribune will play an indispensible role in the core operations of all three.

⁴ Search for Dreamcatcher Broadcasting LLC, State of Delaware - Division of Corporations, http://corp.delaware.gov/ (search for "Dreamcatcher Broadcasting LLC" in "Entity Name" field). Tribune.com, "Ed Wilson Named President of Tribune Broadcasting," Feb. 4, 2008,

http://corporate.tribune.com/pressroom/?p=287. ⁶ See, e.g., File No. BTCCDT-20130715AGP, Transferee Exhibit 15, Asset Purchase Agreement,

at para. 1(b). ⁷ See id. at para. 5.

Under the SSA, Tribune will provide the relevant stations with all technical services, including maintenance of all technical equipment and the use of a staff engineer. Tribune will also provide all promotional and marketing services, including maintenance and operation of the stations' websites and development of any mobile applications. Tribune will also handle all back office, support, and payroll services.

Most notably, Tribune will provide the three stations with MVPD redistribution assistance, and with "delivered programming" including but not limited to local news. The SSA provides that the stations "shall consult" with Tribune Broadcasting regarding retransmission consent negotiations and related agreements. It also makes clear that Tribune Broadcasting will exercise "editorial judgment" over the programming it provides for these stations.⁸

Norfolk/Portsmouth/Newport News is the forty-fourth ranked DMA, covering roughly 710,100 households as of 2013. Tribune currently owns the *Daily Press*, which covers the Hampton Roads metro area, including Norfolk and Portsmouth. Through its deal with Local TV, Tribune would extend its reach in the area by acquiring two broadcast stations, WGNT-TV and WTKR-TV. WTKR-TV, a CBS affiliate, is ranked among the top-4 stations in the DMA. If the Commission were to appropriately attribute control of these stations to Tribune, this transaction would be impermissible under the NBCO Rule.

The Wilkes-Barre/Scranton/Hazelton DMA is the fifty-fourth largest television market, covering some 581,000 households as of 2013. Through its SSA with Dreamcatcher, Tribune seeks impermissibly to own WNEP-TV and *The Morning Call*, a combination that would violate Section 73.3555(d)(iii) of the Commission's rules because WNEP's signal encompasses the entire community in which this daily newspaper is published. Because the station should be attributable to Tribune, this transaction likewise would be impermissible under the NBCO Rule.

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⁸ See id., Shared Services Agreement, at para. 6.

IV. If The Commission Grants the Transaction in Whole or in Part, It Should Condition Approval of the Assignments Upon the Outcome of Any Rulemaking Pertaining to the National Television Multiple Ownership Rule

Free Press calculates that Tribune's television stations, with the addition all of the Local TV stations including those subject to this Petition to Deny, would reach 44 percent of the nation's TV households. Under the Commission's national television multiple ownership rule, a licensee may own or operate stations that serve no more than 39% of the nation's television households. However, under the current rules, when calculating the total audience reached by an entity's stations, the so called "UHF discount" is applied, and audiences of UHF stations are given only half weight. Application of the UHF discount to Tribune's stations after adding all of the Local TV stations in play in this transaction would yield a national coverage figure of 27%. The three stations subject to the Dreamcatcher SSAs and this Petition to Deny add 1.1% to the actual total population coverage, and 0.55% to the discounted total. Accordingly, absent the UHF discount, the proposed assignment of all Local TV stations including these three licenses to Tribune would violate the national television multiple ownership rule.

Free Press and others have long argued that the UHF discount is obsolete in the wake of the digital television transition, and that continued application of the provision is arbitrary and capricious. As a consequence, there is good reason for the Commission to condition any action granting these three applications – or granting the entire transaction – in whole or in part upon the outcome of any proceeding that modifies or repeals the UHF discount.

⁹ 47 C.F.R. § 73.3555(e)(1).

¹⁰ *Id.* § 73.3555(e)(2)(i).

¹¹ See, e.g., Comments of United Church of Christ Office of Communication, Inc., MB Docket No. 09-182, at 10-13 (filed July 10, 2010).

V. This Proceeding Should Be Referred to the Full Commission for Consideration

Petitioners note that only the full Commission has authority to approve these assignments. The Commission's delegation of authority to the Media Bureau expressly precludes the Bureau from acting upon "[m]atters that present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines." 47 C.F.R. § 0.283(c). Such proceedings must be referred to the Commission *en banc* for disposition. Along with the pending Gannett-Belo assignments (which must also be referred to the full Commission), ¹² these transactions raise novel questions of law, fact, and policy, and thus must be acted upon by the full Commission rather than the Media Bureau.

As discussed above, Tribune has not sought waivers (and would not qualify to receive waivers in any event) for the acquisition of television stations in areas where its concurrent ownership of a daily newspaper would violate the NBCO rule. Instead, it proposes to operate the stations while letting another entity function as the nominal licensee. Petitioners are not aware of any case in which the Commission has allowed licensees to use sharing arrangements to circumvent the NBCO Rule and defeat that rule's underlying purpose to promote competition and diversity in local news.

The reasons such matters must be referred to the full Commission have been thoroughly addressed in the Petition to Deny the Gannett-Belo transaction filed on behalf of Free Press, *et al.* As is set forth therein, Commission action is especially important in this proceeding because the use of SSAs to evade the Commission's ownership rules is an unresolved question that has been the subject of a long pending Application for Review of the Media Bureau's decision in the *Media Council Hawai'i* case (involving the local television ownership rules). Moreover, there is a compelling need for guidance from the full Commission in light of the significant number of

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¹² See supra note 3.

new transactions in which SSAs are being used or contemplated.¹³ If the Commission itself fails to address quickly the Gannett-Belo and Tribune-Local TV assignments, Petitioners expect that there will soon be many more such sharing arrangements to the substantial detriment of the public. Further delay in action by the full Commission will result in additional litigation by encouraging even more companies to attempt circumvention of the ownership limits. Inaction will even harm parties to such SSAs because they will face the problem of unwinding them in the event that the full Commission grants the *Media Council of Hawai'i* Application for Review, the Gannett-Belo Petition to Deny or this Petition.

CONCLUSION

Tribune's applications request impermissible allowances for shared service agreements between its newspaper operations and broadcast stations serving the same markets. These arrangements subvert the purposes of the Commission's rules and subordinate the interests of local communities to the private interests of Tribune. As such, the Commission should not approve the proposed license transfers subject to this Petition to Deny.

WHEREFORE, Petitioners ask that the Commission consider this matter *en banc* in the first instance; that the Commission dismiss or deny the applications subject to this Petition to Deny or designate them for hearing; that it condition any grant of the applications in whole or in part upon the outcome of any rulemaking pertaining to the modification of 47 C.F.R. § 73.3555(e); and that it grant all such other relief as may be just and proper.

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provide such notice.

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¹³ In addition, the situation is exacerbated by the fact that the Commission does not even know about SSAs that are entered into without notice to the Commission. Thus, there may be many other sharing arrangements unknown to the public because stations can enter into and modify them without informing anyone. The Commission has thus far declined to require licensees to

Respectfully submitted,

/s/ Matthew F. Wood

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August 19, 2013

CERTIFICATE OF SERVICE

I, Matthew F. Wood, Policy Director for Free Press, certify that on August 19, 2013, the foregoing Petition to Deny was deposited via first class mail, postage prepaid (except as otherwise indicated below) and served by electronic mail, on the following:

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/s/ Matthew F.	Wood
/5/ IVIaunic W T.	Wood

^{*} via electronic mail only

DECLARATION OF KELLY V. PLACE

- I, Kelly V. Place, am a member of Free Press, located at 1025 Connecticut Avenue NW, Suite 1110, Washington, DC 20036.
- I reside at 213 Waller Mill Road, Williamsburg, VA 23185.
- I am a regular viewer of the television stations serving the Norfolk-Portsmouth-Newport News television market, including WTKR and WGNT.
- 4. Viewers like me will be harmed by Tribune's acquisition of these stations because the scale of Tribune's operation will reduce its attention to the needs of the local communities the stations are supposed to serve.
- Furthermore, Tribune's ownership of WTKR and WGNT, which serve the same community in which the Tribune-owned Hampton Roads *Daily Press* newspaper is published, will harm me by reducing the diversity of news and decreasing the number of viewpoints available in this market.
- 6. Finally, in my experience and opinion, the *Daily Press*'s historically close ties to the City of Newport News' and the City of Hampton's municipal governments has led to incomplete or biased coverage of controversial city-sponsored projects, such as the King William Reservoir Project terminated in 2009, or the Fort Monroe preservation and conversion issue. Tribune's ownership of multiple broadcast outlets along with the *Daily Press* newspaper in this area would further diminish the amount and quality of coverage of these civic affairs and other such matters of public importance.
- 7. This Declaration has been prepared in support of the foregoing Petition to Deny.
- 8. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

Kelly V. Place

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